

AMENDED IN SENATE JUNE 9, 2016

AMENDED IN ASSEMBLY APRIL 14, 2016

AMENDED IN ASSEMBLY MARCH 31, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2488**

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**Introduced by Assembly Member Dababneh**

February 19, 2016

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An act to amend Section 5515 of, and to add Section 2081.10 to, the Fish and Game Code, relating to fish.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2488, as amended, Dababneh. Protected species: unarmored threespine stickleback: taking or possession.

Existing law prohibits the taking or possession of a fully protected fish, except as provided, and designates the unarmored threespine stickleback as a fully protected fish. The California Endangered Species Act prohibits the taking of an endangered or threatened species, except as specified. The Department of Fish and Wildlife may authorize the take of listed species if the take is incidental to an otherwise lawful activity and the impacts are minimized and fully mitigated.

This bill would permit the department to authorize, under the California Endangered Species Act, the take of the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) attributable to the periodic dewatering, inspection, maintenance, *modification*, or repair of the Metropolitan Water District of Southern California's Foothill Feeder water supply facility from Castaic Dam to the Joseph Jensen

Treatment Plant in the County of Los Angeles, as specified, if certain conditions are satisfied.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) The Foothill Feeder below Castaic Dam in the County of  
4 Los Angeles is the primary conduit for water from the State Water  
5 Project for the Southern California region served by the  
6 Metropolitan Water District of Southern California. The  
7 Metropolitan Water District of Southern California is a public  
8 agency comprised of 26 member public agencies – 14 cities, 11  
9 municipal water districts, and one county water authority – and  
10 provides water to more than 19 million people in the Counties of  
11 Los Angeles, Orange, Riverside, San Bernardino, San Diego, and  
12 Ventura.

13 (b) Water supplies from the State Water Project are a critical  
14 part of Southern California's water supply portfolio, and any  
15 interruption of that supply must be minimized to ensure delivery  
16 of clean and reliable water supplies for municipal and industrial  
17 uses, including health and human safety, and to water agencies  
18 and cities that rely upon water supply deliveries from the  
19 Metropolitan Water District of Southern California.

20 (c) Periodic dewatering, inspection, maintenance, modification,  
21 or repair, including emergency repairs, require that all or a portion  
22 of the Foothill Feeder be dewatered into the Santa Clara River and  
23 certain of its tributaries where unarmored threespine stickleback  
24 (*Gasterosteus aculeatus williamsoni*) may be present during these  
25 activities. Thus, the incidental take of unarmored threespine  
26 stickleback must be permitted for the periodic dewatering,  
27 inspection, maintenance, modification, or repair of the Foothill  
28 Feeder to protect Southern California water supplies.

29 (d) *It is the intent of the Legislature that, in the course of issuing*  
30 *a permit for the incidental take of the unarmored threespine*  
31 *stickleback pursuant to Section 2081.10 of the Fish and Game*  
32 *Code, the Department of Fish and Wildlife should consult with the*  
33 *Metropolitan Water District of Southern California to consider*

1 *feasible measures to avoid and minimize incidental take of*  
2 *unarmored threespine stickleback, taking into account physical,*  
3 *technological, logistical, legal, financial, and environmental*  
4 *constraints. It is also the intent of the Legislature that both agencies*  
5 *should consult with the United States Fish and Wildlife Service*  
6 *with respect to feasible mitigation and conservation measures to*  
7 *design them consistent with a comprehensive and consistent*  
8 *multiagency and multiparty approach to the long-term conservation*  
9 *of the species in the Santa Clara River watershed.*

10 SEC. 2. Section 2081.10 is added to the Fish and Game Code,  
11 to read:

12 2081.10. (a) The department may authorize, under this chapter,  
13 the incidental take of unarmored threespine stickleback  
14 (*Gasterosteus aculeatus williamsoni*) attributable to the periodic  
15 dewatering, inspection, maintenance, modification, or repair of  
16 the Metropolitan Water District of Southern California's Foothill  
17 Feeder water supply facility from Castaic Dam to the Joseph Jensen  
18 Treatment Plant in the County of Los Angeles, contingent upon  
19 the fulfillment of the following conditions:

20 (1) The department has determined that the requirements of  
21 subdivisions (b) and (c) of Section 2081 are satisfied for the take  
22 of the unarmored threespine stickleback.

23 (2) The department ensures that all further measures necessary  
24 to satisfy the conservation standard of subdivision (d) of Section  
25 2805 are incorporated into the project.

26 (3) The take authorization provides for the development and  
27 implementation, in cooperation with the department, of an adaptive  
28 management process for monitoring the effectiveness of, and  
29 adjusting as necessary, the measures to minimize and fully mitigate  
30 the impacts of the authorized take. The adjusted measures are  
31 subject to Section 2052.1.

32 (4) A biologist will be on duty whenever an activity is conducted  
33 that may affect the unarmored threespine stickleback.

34 (b) The take authorization shall cover any incidental take of  
35 unarmored threespine stickleback attributable to the periodic  
36 dewatering, inspection, maintenance, modification, or repair of  
37 the Foothill Feeder that may occur in the following locations:

38 (1) Within the Santa Clara River, from the Bouquet Canyon  
39 Road Bridge to a point located 4,000 feet downstream of where

1 Commerce Center Drive, as of January 1, 2016, dead ends adjacent  
2 to the Santa Clara River.

3 (2) From the confluence with the Santa Clara River upstream  
4 to the following locations:

5 (A) In Charlie Canyon to a point 1,000 feet upstream of the  
6 Foothill Feeder facility dewatering structure.

7 (B) In San Francisquito Creek to the Copper Hill Drive bridge.

8 (C) In Placerita Creek to the Hacienda Lane crossing.

9 (D) In Bouquet Creek to the Newhall Ranch Road Bridge.

10 (c) The take authorization shall also cover any incidental take  
11 of unarmored threespine stickleback that may occur in the course  
12 of implementing mitigation or conservation actions required in the  
13 permit issued pursuant to subdivision (a) as may be modified  
14 through an adaptive management plan adopted pursuant to  
15 paragraph (3) of subdivision (a).

16 (d) This section shall not be construed to exempt from any other  
17 law the periodic dewatering, inspection, maintenance, modification,  
18 or repair of the Foothill Feeder.

19 (e) *As used in this section, "modification" does not include*  
20 *alterations to expand the maximum physical capacity of the*  
21 *Foothill Feeder to deliver water.*

22 SEC. 3. Section 5515 of the Fish and Game Code is amended  
23 to read:

24 5515. (a) (1) Except as provided in this section, Section  
25 2081.6, Section 2081.7, Section 2081.10, or Section 2835, a fully  
26 protected fish shall not be taken or possessed at any time. No  
27 provision of this code or any other law shall be construed to  
28 authorize the issuance of a permit or license to take a fully  
29 protected fish, and no permit or license previously issued shall  
30 have force or effect for that purpose. However, the department  
31 may authorize the taking of a fully protected fish for necessary  
32 scientific research, including efforts to recover fully protected,  
33 threatened, or endangered species. Before authorizing the take of  
34 a fully protected fish, the department shall make an effort to notify  
35 all affected and interested parties to solicit information and  
36 comments on the proposed authorization. The notification shall  
37 be published in the California Regulatory Notice Register and be  
38 made available to each person who has notified the department,  
39 in writing, of his or her interest in fully protected species and who  
40 has provided an email address, if available, or postal address to

1 the department. Affected and interested parties shall have 30 days  
2 after notification is published in the California Regulatory Notice  
3 Register to provide relevant information and comments on the  
4 proposed authorization.

5 (2) As used in this subdivision, “scientific research” does not  
6 include an action taken as part of specified mitigation for a project,  
7 as defined in Section 21065 of the Public Resources Code.

8 (3) A legally imported fully protected fish may be possessed  
9 under a permit issued by the department.

10 (b) The following are fully protected fish:

11 (1) Colorado River squawfish (*Ptychocheilus lucius*).

12 (2) Thicktail chub (*Gila crassicauda*).

13 (3) Mohave chub (*Gila mohavensis*).

14 (4) Lost River sucker (*Catostomus luxatus*).

15 (5) Modoc sucker (*Catostomus microps*).

16 (6) Shortnose sucker (*Chasmistes brevirostris*).

17 (7) Humpback sucker (*Xyrauchen texanus*).

18 (8) Owens River pupfish (*Cyprinodon radiosus*).

19 (9) Unarmored threespine stickleback (*Gasterosteus aculeatus*  
20 *williamsoni*).

21 (10) Rough sculpin (*Cottus asperimus*).